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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U. S.
FILED
MAY 22 1972
MICHAEL RODAK, JR., CLERK

No. 71-1309

DENNIS TURNER, *Petitioner*

v.

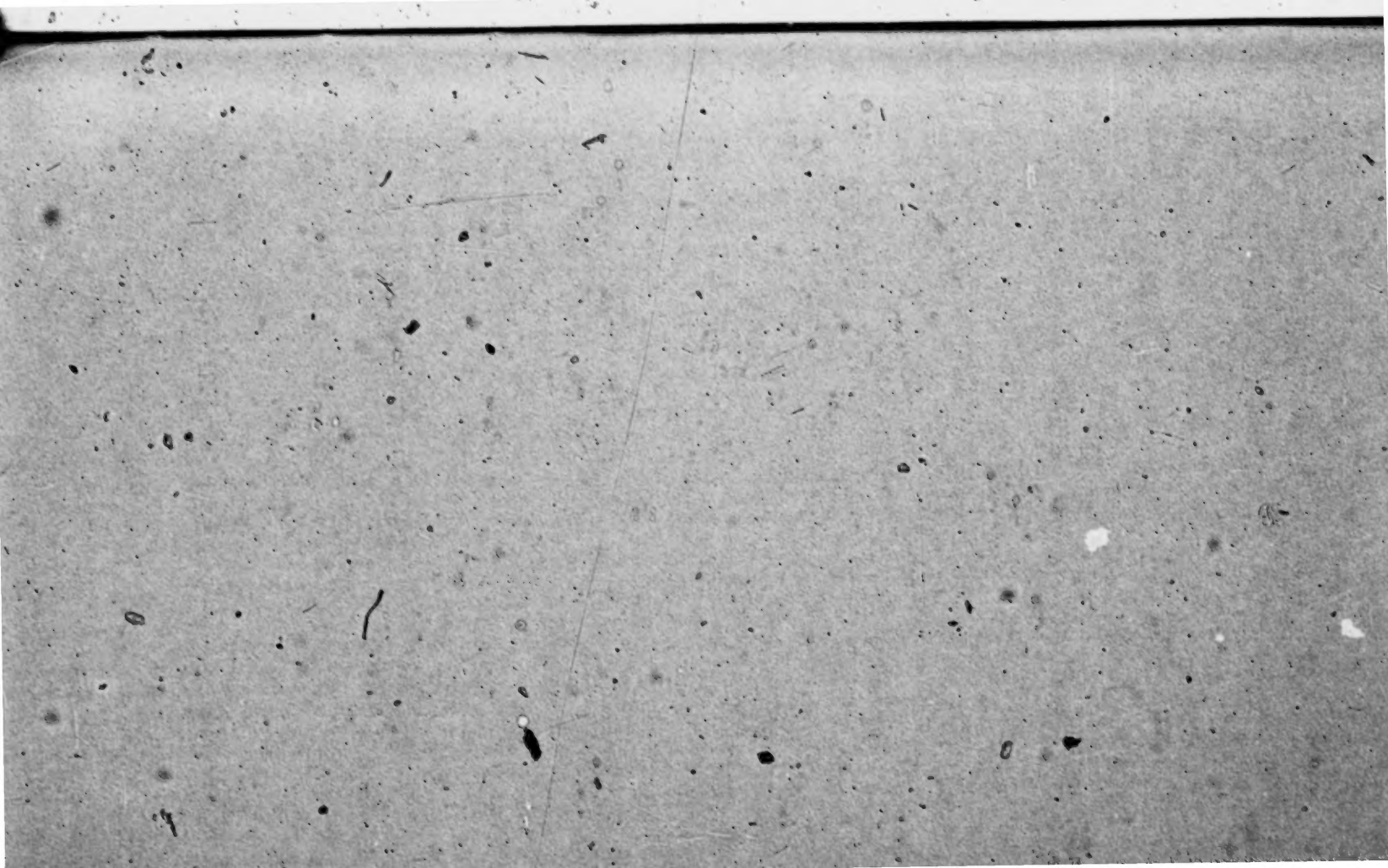
STATE OF ARKANSAS, *Respondent*

REPLY OF PETITIONER TO RESPONSE OF STATE OF ARKANSAS

BOYD TACKETT
421 Hickory Street
Texarkana, Arkansas 75501

ROYCE S. WEISENBERGER, JR.
501 East Sixth Street
Texarkana, Arkansas 75501

Attorneys for Petitioner



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REASONS FOR SUSTAINING THE WRIT

Respondent State of Arkansas is now contending that the principle enunciated by this Court in *Ashe v. Swenson*, 397 U.S. 436, does not give rise to an "ultimate" issue on which the jury grounded its verdict of not guilty to the charge of murder (while committing robbery), and that, therefore, the Petitioner is subject to be tried upon the charge of robbery.

The Respondent State of Arkansas follows the contention of the Petitioner in insisting that in order

for an ultimate issue to be presented that the robbery and murder occurred on the same occasion and by the same person or persons. However, contrary to the Stipulation filed herein by Respondent State of Arkansas and Petitioner Dennis Turner (Appen. to Petition for Writ, pgs. 13a-15a), Respondent now argues that the jury could have found that the murder and robbery occurred at separate times and the Petitioner did not murder while he might have robbed. It definitely appears that the State of Arkansas has either neglected or cares to ignore the Stipulation in an effort to cause this Court to deny the Writ for Certiorari.

The Respondent imagines a multitude of possibilities in an effort to circumvent its Stipulation and contend that while Petitioner did not murder he could have robbed. Ignoring the Stipulation, Respondent contends that a principal witness for the State of Arkansas, Richard Turner, in nowise related to Petitioner Dennis Turner, could have murdered Larry Wayne Yates subsequent to Yates being robbed by either or both Petitioner Dennis Turner and witness Richard Turner—insisting, contrary to its Stipulation, that Petitioner could have committed robbery without committing murder — further speculating that witness Richard Turner could have committed

the robbery and the murder. Petitioner insists that this matter is to serious for speculation, conjectures, and imagination of the Respondent.

STIPULATION

(Appen. to Petition for Writ, pgs. 13a-15a)

Petitioner Dennis Turner and Respondent State of Arkansas stipulated that the evidence adduced by and on behalf of the State of Arkansas (Murder while committing Robbery), upon which charge Petitioner Dennis Turner was found not guilty, constitutes all of the evidence that can be utilized by and on behalf of the State in any trial of the Defendant upon the charge of Robbery; that the pleadings, evidence, proceedings, judgment, and stipulations entered into by and between the parties in the murder case should be considered a part of the record in the instance case—Robbery; that whoever (one or more people) killed Larry Wayne Yates also robbed him at the same time and place and on the same occasion; that whoever (one or more people) robbed Larry Wayne Yates also killed Larry Wayne Yates, at the same time and place and on the same occasion; that if Defendant Dennis Turner killed or participated in the killing of Larry Wayne Yates, he also robbed or participated in the robbing of Larry Wayne Yates;

that if Defendant Dennis Turner robbed or participated in the robbing of Larry Wayne Yates, he also killed or participated in the killing of Larry Wayne Yates; that if Defendant Dennis Turner did not kill or participate in the killing of Larry Wayne Yates, he did not rob or participate in the robbing of Larry Wayne Yates; and that if Defendant Dennis Turner did not rob or participate in the robbing of Larry Wayne Yates, he did not kill or participate in the killing of Larry Wayne Yates; that the same testimony adduced by and on behalf of the State of Arkansas in the murder case against Dennis Turner will necessarily be reintroduced in the Robbery charge against Dennis Turner; and that there will be no additional testimony introduced by and on behalf of the State of Arkansas than has been introduced in the Murder case.

TESTIMONY OF WITNESS RICHARD TURNER

For some inexplicable reason Respondent State of Arkansas cites considerable testimony of State witness Richard Turner as basis for speculation and conjecture that the robbery and murder did not occur on the same occasion, and that perhaps Dennis Turner could have robbed but not killed Larry Wayne Yates. This testimony by Richard Turner would conclusively establish that Petitioner Dennis Turner

robbed and killed Larry Wayne Yates on the same occasion.

The principal witnesses for the State of Arkansas concerning the robbery and murder are Richard Turner and Johnny Mitchell—two adults who were engaged in a Christmas Eve night poker game with two teenagers, Petitioner Dennis Turner and now deceased Larry Wayne Yates. They testify that Dennis Turner at 4:00 o'clock, a.m., on Christmas Day borrowed a pistol from Richard Turner, left in an automobile being driven by Larry Wayne Yates, and that thirty minutes later Dennis Turner returned to the home of and reported to Richard Turner that he had robbed and killed Larry Wayne Yates, exhibiting the murder pistol, empty shells, and the billfold and money belonging to Larry Wayne Yates. That Dennis Turner and Richard Turner drove to and viewed the body of Larry Wayne Yates and then immediately reported this matter to Johnny Mitchell. Richard Turner, according to his testimony, then helped Dennis Turner to hide the Larry Wayne Yates automobile.

The testimony of the State, if believed, would conclusively establish that Dennis Turner, within a period of thirty minutes, robbed and killed Larry Wayne Yates. However, Respondent State of Ar-

kansas has failed to advise this Court of the testimony of Richard Turner and Johnny Mitchell, including recorded statements they gave on Christmas Day, a short time after the robbery and killing, to the principal Investigating Officer, Sergeant Travis Ward, Criminal Division, State Police Department, wherein they contradicted themselves and each other in an effort to absolve themselves.

Contrary to the testimony of Richard Turner and Johnny Mitchell, Richard Turner's taped statement to the Investigating Officer was that after the poker game broke up and as the players were leaving at 4:00 o'clock in the morning, and immediately before Richard Turner loaned his pistol to Dennis Turner, Johnny Mitchell told Richard Turner to watch Dennis Turner because Dennis had some notion of getting Larry's money.

State witnesses Richard Turner and Johnny Mitchell testified that Dennis Turner acted normal throughout the night of the poker game, but Richard Turner stated on the tape that Dennis seemed serious about everything, and he had never acted that way before, and Johnny Mitchell stated on tape that he didn't know whether it was medicine, but that Dennis Turner was just a different person at the time.

Richard Turner testified that he did not go to sleep after Dennis Turner borrowed his pistol and left with Larry Wayne Yates. However, Johnny Mitchell stated on the tape that he woke Richard Turner after Dennis Turner had reported the robbery and killing to him.

Johnny Mitchell testified that he did not go to the scene of the body. He stated on the tape that he drove to the scene of the body and that Dennis Turner asked Richard Turner to leave the car and look at the body of Larry Wayne Yates—and that neither Richard Turner nor Dennis Turner wanted to touch the body.

Richard Turner testified that at the scene of the body Dennis Turner left the automobile, viewed the body, and stayed there for a time. Richard Turner stated on the tape that Dennis Turner stated that he did not want to touch Larry—that Richard Turner did not, either—and that they drove on down the road.

The tape recordings of these two principal witnesses (Tr. 393-396) revealed many other important discrepancies of their testimony—enough for the jury to conclusively establish that neither was worthy of

belief, and that teenage Petitioner Dennis Turner had been doped and used by these adults.

CONCLUSION

Until now the State of Arkansas has continuously insisted that Dennis Turner robbed and killed Larry Wayne Yates in a thirty-minute period during early Sunday morning. The State so stipulates in this cause. At this late hour the State in effect says that its proof meant nothing during the murder trial, that its Stipulation should be ignored, and that through some means double jeopardy should be overlooked and Dennis Turner be tried again for crimes occurring at the same time and on the same occasion.

There was ample proof at the murder trial that after the robbery and murder two automobiles accompanied Dennis Turner to his home in the rural area; that one of the automobiles drove away, leaving Dennis Turner in his automobile within the yard of his home; that Dennis Turner sometime thereafter walked into his bedroom, left the murder pistol and Larry Wayne Yates' billfold and money in his pocket—attempting to hide nothing. Yes, the jury could have only concluded that Larry Wayne Yates was robbed and killed on the

same occasion by some person or persons other than Dennis Turner, who was doped and being used by adults after they became frightened and were only concerned with clearing themselves.

There is no way to escape the fact that *Ashe W. Swenson*, 397 U.S. 463, applies in this case.

Respectfully submitted,

BOYD TACKETT
421 Hickory Street
Texarkana, Arkansas 75501
ROYCE S. WEISENBERGER, JR.
501 East Sixth Street
Texarkana, Arkansas 75501

Attorneys for Petitioner